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APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-621

THE STATE OF ARIZONA,

Petitioner

vs.

WILLIAM DALE MANYPENNY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 13, 1979
CERTIORARI GRANTED APRIL 14, 1980

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CR-76-377-Tucson

THE STATE OF ARIZONA

vs.

WILLIAM DALE MANYPENNY

DOCKET ENTRIES*

DATE	PROCEEDINGS
1976	
July 20	Petition for Removal from State court, Case No. A-29887, and copy of indictment
July 22	Record of Proceedings from the Superior Court of Arizona in Case No. A-29887
July 22	Defendant MANYPENNY'S Motion for Order Directing Attorney for the Government to Enter an Appearance
Nov. 1	Defendant MANYPENNY'S Motion for Dismissal

*Irrelevant docket entries have been omitted

DATE	PROCEEDINGS
Nov. 2	Defendant MANYPENNY'S Supplemental Memorandum in Support of Motion to Dismiss
Nov. 3	Minute Entry, RE Hearing on Defendant MANYPENNY'S Motion to Dismiss
Nov. 3	Defendant MANYPENNY'S Requested Voir Dire
Nov. 3	State of Arizona's Requested Jury Instructions
Nov. 3	Defendant MANYPENNY'S Requested Jury Instructions
Nov. 3	State of Arizona's Requested Voir Dire Questions
Nov. 4	Minute Entry, RE Jury Trial Proceedings
Nov. 5	Minute Entry, RE Jury Trial Proceedings
Nov. 6	Jury Verdict of Guilty as to Defendant MANYPENNY
Nov. 15	Defendant MANYPENNY'S Motion For Arrest of Judgment
Nov. 15	Defendant MANYPENNY'S Motion For New Trial

DATE	PROCEEDINGS
Nov. 15	Defendant MANYPENNY'S Notice of Hearing on Motion for Arrest of Judgment and Motion for New Trial
Nov. 30	Minute Entry, RE Hearing on Defendant MANYPENNY'S Motion for Arrest of Judgment and Motion for New Trial
Dec. 3	State of Arizona's Response to Motion For Arrest of Judgment
Dec. 3	State of Arizona's Motion for Rehearing on Arrest of Judgment
Dec. 6	Order Denying State of Arizona's Motion for Hearing or Oral Argument and Granting Motion for Reconsideration
Dec. 13	Defendant MANYPENNY'S Additional Authorities
1977	
Sept. 9	Defendant MANYPENNY'S Motion for Status Hearing
Sept. 26	Minute Entry RE Hearing on Defendant MANYPENNY'S Motion for Status Hearing

DATE	PROCEEDINGS
Sept. 28	Order Vacating Order entered 11/30/76, Denying Motion for Arrest of Judgment heretofore Granted, Motion for Arrest of Judgment treated as Motion for Judgment of Acquittal is Granted, verdict rendered herein is set aside; Defendant MANYPENNY is Adjudged Not Guilty
Oct. 17	State of Arizona's Notice of Appeal
Oct. 25	Designation for Record on Appeal

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Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Case No. CR 76-377 TUC WCF
(Filed November 15, 1976)

State Of Arizona, Plaintiff

v.

William Dale Manypenny, Defendant

MOTION FOR ARREST OF JUDGMENT (Rule 34)

Defendant respectfully moves the Court for an order arresting the judgment under the provisions of Rule 34, Rules of Criminal Procedure on the basis that the Court had no jurisdiction to try the offense charged in the indictment.

The indictment in the above case was rendered by a state grand jury for commission of a violation of the laws of the State of Arizona and was tried to this Court

under the Removal Statutes contained in 28 U.S.C. 1441 et. seq.

The effect of the removal to federal court does not invest the state prosecution with jurisdiction or power to try the case; rather, any defects in state jurisdiction, necessarily, if dealing with subject matter deprive the federal court of jurisdiction:

> "If the state court is without jurisdiction in the first instance, a federal court will have no removal jurisdiction based thereon even if the federal court would have had original jurisdiction had the action originally been brought there. Otherwise stated, federal removal jurisdiction is purely derivative, and if the state court had no jurisdiction, the federal court acquires none and gains none by removal, but must dismiss for want of jurisdiction. Wright, p. 132 (Referring to Wright, Law of Federal Courts [(1970 ed.], ch. 5.) Adams v. State Farm Mutual Automobile Insurance Co., 313 F.Supp. 1349 Miss., (1970). See also, A.J. Curtis & Co. v. D. W. Wills, Inc., 305 F.2nd 811, (CA2-1962). Emphasis added."

This motion, as supported by the Memorandum of Points and Authorities, will proceed on the supposition that lack of jurisdiction of the subject matter, i.e., special jurisdiction of the United States over certain crimes including assault, and other crimes involving unique federal concerns could not be remedied by the removal.

Dated this 15th day of November, 1976.

James D. Whitney
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

On November 6th, 1976, the Defendant was convicted of the crime of assault with a deadly weapon, carrying with it the penalty of not less than five years to life. A.R.S. § 13-249, A & B.

Prior to trial, a motion was made by the Defendant to dismiss the indictment since the state action lacked jurisdiction because it represents a state inference with the conduct of federal law enforcement, and, also, since federal statutes had provided for the punishment of assault within territories under the exclusive or concurrent control of the federal government, the federal law was supreme and the state statutes governing assault could in no way be applied to the territories under the jurisdiction of the United States.

The United States Constitution is the supreme law of the land and any laws enacted by reason of this constituted authority are also the supreme law of the land, including the control and policing of federal lands.

Article VI, clause 2, of the Constitution provides "This Constitution, and the Laws of the United States which shall be made in Purance thereof; shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The Constitution has further made provision for the control and supervision of the public lands in addition to the general provision that the Congress shall make all laws necessary to carrying on the activities by the executive branch being quoted respectfully as:

> to ***make all needful Rules and Regulations inspecting the Territory or other Property belonging to the United States; ***, Art. IV, sec. 3, cl. 2.

and

> The Congress shall have the power ***To make all Laws which shall

> be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department of Officer thereof. Art. I, sec. 8, cl. 18.

Pursuant to this authority, the Congress enacted crimes specifically dealing with federal reservation, exclusive or concurrent, the rationale of which was to maintain order over federal lands, 18 U.S.C. Section 7, Williams v. United States, 327 U.S. 711 (1946) recites the fascination history of the circumstances and enactments culmination in the present law. It is evident that the intent of the legislature was to provide initial protection against the most serious of crimes and to then legislate as to the acts not covered by 18 U.S.C. Section 7 by the provisions of the Assimmulated Crimes act. Ibid. 712-713. See 18 U.S.C. Section 13.

The Arizona statutes in recognizing that areas of peculiar or unique federal interest existed, provided:

> A. A person is liable to punishment by the laws of this state for a crime or public offense committed by him therein, except as where it is by law cognizable exclusively in the courts of the United States. A.R.S. Section 13-150.

The enabling Act creating the state of Arizona specifically provided that the inhabitants of the ungranted lands and unappropriated lands forever disclaimed any interest. Section 20.

Granted under constitutional authority the United States has authority to control certain activities on the public reservations, the question becomes what type of activity should be controlled by the federal government exclusively through the federal courts:

> But the authority of the state laws or their administration may not interfere with carrying out of a national purpose. Where enforcement of the state law would handicap efforts to carry out the plans of the United States, the state enactment must give way. Stewart v. Sadrakula, 309 U.S. 94, (1940).

In the present case, there was never any question that the Defendant was enforcing federal statutes on immigration, on federal land, as federal officer. Brown v. Cain, 56 F.Supp. 56, (Pa. -1944). The law is clear that in all matters controlling the entrance of aliens, the United States law is supreme and that on that basis, the authority of the state to interfere with the activities of the aliens, federal agents should give way to supreme interests of the control over the admission of aliens into the United States***Ilines v. Davidowitz, 312 U.S. 52, 76 (1941).

The Defendant was performing his duty as provided by statute (8 U.S.C. Sec. 1347) and was attempting to apprehend someone in validation of federal law (8 U.S.C. Sec. 1325). The United States under its special jurisdiction of 18 U.S.C. Sec. 7 should be the only person to take cognizance of this act.

If the Defendant acted in excess of his jurisdiction, he should be tried under federal statutes applying to such matters, such as the federal and civil rights. 18 U.S.C. Sec. 242.

It should also be noted that the imposition of a state sentence upon a federal officer outlined above creates a disparaty of sentence far beyond the provision of 18 U.S.C. Section 113, creating a situation where the federal officer acting in the territorial jurisdiction of the United

States is punished far beyond the provisions intended by federal law for its special jurisdiction. Hockenberry v. United States, 422 F.2nd 171, (1970).

In regard to the status of the Organ Pipe National Monument where the offense, by all testimony takes place, is under the control of the Director of the National Park Service, see documents to original motion to dismiss, and the lands so reserved and used should be considered under the preview of Sections 7 and 113 of Title 13.

By this reference, Defendant attaches all documents in Motion to Dismiss.

Dated this 15th day of November, 1976.

James D. Whitney
Attorney for Defendant

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Telephone: 884-9122
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Case No. CR 76-377 TUC WCF
(Filed November 15, 1976)

State of Arizona, Plaintiff

v.

William Dale Manypenny, Defendant

MOTION FOR NEW TRIAL (Rule 33)

Defendant moves the Court for a New Trial under the provisions of Rule 33, Rules of Criminal Procedure in the interests of justice in the following respects:

(1) the Prosecution used as statement not disclosed to the Defendant or alluded to in any of the discovery materials; further no transcript of said proceedings were furnished;

(2) the Court permitted an instruction to the jury that "You are instructed that a loaded gun is a deadly weapon as a matter of law;" and

(3) a statement was not provided to the Defendant as required by Local Rule 86, Criminal Rules of Procedure.

The above actions and rulings of the Court were in contradiction and violation of the laws of the State of Arizona where applicable and the Court should order a new trial.

Dated this 15th day of November, 1976.

James D. Whitney
Attorney for Defendant

cc: mailed this 15th day of November, 1976 to Larry Lingeman, County Attorney's Office, 9th Floor, Courts Building, Tucson, Arizona, 85701

(attached Memorandum of Points and Authorities omitted)

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Case No. CR 76-377 TUC WCF
(Filed December 3, 1976)

The State Of Arizona, Plaintiff

v.

William Dale Manypenny, Defendant

MOTION FOR REHEARING ON ARREST OF JUDGMENT

COMES NOW the State of Arizona, by and through the Pima County Attorney, STEPHEN D. NEELY, and his deputy, LARRY J. LINGEMAN, and requests this Honorable Court for a rehearing of Defense counsel's Motion for Arrest of Judgment and this Court's subsequent dismissal for the reason that the State has filed a response to said motion, none having been filed on the date of the hearing because the State was not aware of the pending motion.

Respectfully submitted this 3rd day December, 1976.

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

_____
Larry J. Lingeman
Deputy County Attorney

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Case No. CR 76-377 TUC WCF
(Filed December 3, 1976)

The State Of Arizona, Plaintiff

vs.

William Dale Manypenny, Defendant

RESPONSE TO MOTION FOR ARREST OF JUDGMENT

COMES NOW the State of Arizona, by and through the Pima County Attorney, STEPHEN D. NEELY and his deputy, LARRY J. LINGEMAN, pursuant to leave of Court to file a late response by the Honorable William C. Frey, opposes the motion for arrest of judgment on the grounds that these issues have already been raised and fully argued and for reasons set forth in the accompanying Memorandum.

Respectfully submitted this 3rd day of December, 1976.

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

Larry J. Lingeman
Deputy County Attorney

ARIZONA HAS CRIMINAL JURISDICTION OVER THE LAND IN QUESTION

Arizona has criminal jurisdiction for the act committed by William Manypenny whether the act occurred on the Organ Pipe National Monument, as all evidence indicates, or, even had it occurred on the Papago Indian Reservation. It is beyond question that a State has jurisdiction over a crime committed by a non-Indian against a non-Indian on a reservation. Williams v. Lee, 358 U.S. 217, 3 L.Ed.2d 251, 79 S.Ct. 269 (1959) and McClanahan v. State Tax Commissioner of

Arizona, 411 U.S. 164, 36 L.Ed. 2129, 93 S.Ct. 1247 (1973).

Moreover, the Arizona Supreme Court has consistently interpreted the Arizona Enabling Act 36 U.S. Stat. 569, the relevant language of which is also contained in the Arizona State Constitution, Article 20, Paragraph 4, as disclaiming only the State's proprietary interest, not its governmental interest therein.

> "We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the state, and that exception set forth in our Enabling Act applies to the Indian lands considered as property and not as a territorial area withdrawn from the sovereignty of the State of Arizona." (Citations omitted)

See, Francisco v. Arizona Supreme Court, No. 12444-PR filed September 28, 1976.

Assuming that the act occurred on the Organ Pipe National Monument, there is still no question as to Arizona's jurisdiction. The special considerations that operate to limit a State's jurisdiction for acts involving tribal Indians on Indian Reservations do not exist on land set aside for a national monument. (For a discussion of the special status of tribal indians, see Williams v. Lee, supra, and McClanahan, supra).

The term "absolute jurisdiction and control" used in the Arizona Enabling Act, does not mean exclusive jurisdiction. The United States Supreme Court has spoken directly on this issue in the Organized Village of Kake v. Egan, 369 U.S. 60, 7 L.Ed.2d 573, 82 S.Ct. 562 (1962).

> "...Indian lands in Arizona remained "under the absolute jurisdiction and control" of the United States, 36 Stat. 557, 569;

yet in Williams v. Lee, 358 U.S. 217, 220, 223, 3 L.Ed. 2d 251, 253, 255, 79 S.Ct. 269, we declared that the test of whether a state law could be applied on Indian reservations there was whether the application of that law would interfere with reservation self-government."

"...The disclaimer of right and title by the State was a disclaimer of proprietary rather than governmental interest."

"...The provision for "absolute jurisdiction and control" received little attention in Congress. In the 1954 Senate hearings the Committee was considering a provision copied from the Oklahoma statute that Indian lands should remain "subject to the jurisdiction, disposal, and control of the United States." Mr. Barney, on behalf of the Justice Department, urged the inclusion of such a provision in order to avoid the possibility that, under United States v. McBratney, 104 U.S. 621, 26 L.Ed. 869, federal criminal jurisdiction over Indian reservations might be extinguished by statehood. Senators Barrett and Jackson thereupon expressed the clear

desire that federal jurisdiction not be made exclusive over all disclaimed areas. Mr. Barney decided that the provision would deprive the State of "political jurisdiction" over disclaimed properties. Senator Cordon declared:

"The State may well waive its claim to any right or title to the lands and still have all of its political or police power with respect to the actions of people on these lands, as long as that does not affect the title to the land."

Senator Jackson said: "All that you are doing here is a disclaimer of proprietary interest," and Mr. Barney agreed. Senator Cordon said:

"The act of admission gives to the State of Alaska political jurisdiction including all that is meant by the term 'police power', within its boundaries unless there be express or definitely implied, which is the same thing, a reservation of exclusive jurisdiction in the United States."

Moreover, a careful examination of the language in the Arizona Enabling Act, shows

that the phrase "absolute jurisdiction and control" does not refer to the Federal land that makes up the Organ Pipe National Monument. That phrase only applies to the lands that make up Indian Reservations, not the "unappropriated and ungranted public lands" that make up the Organ Pipe National Monument.

> "Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States. (Emphasis added)

The phrase beginning "the same" refers to "all lands lying within said boundaries owned or held by any Indian or Indian tribes...". That phrase does not refer to the "unappropriated and ungranted public lands" that make up Organ Pipe National Monument.

Therefore, even if the phrase "absolute jurisdiction and control" did not have the interpretation given it by the Arizona and United States Supreme Courts, it would not effect Arizona's jurisdiction in this case, since the phrase in question does not apply to the land that makes up the Organ Pipe National Monument.

Further, it is undisputed as evidenced by defense counsel's Motion to Dismiss on page 4, line 6 that "[i]f by the terms of the enabling act there is no relinquishment of state jurisdiction over any federal areas within the state or if the admitting act

contains on reservation of federal jurisdiction over its lands within the state, then the United States as title owner of lands within that state retains only the rights of an ordinary proprietor" Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 5 S.Ct. 995, 29 L.Ed. 264 (1884), Collins v. Yosemite Park Co., 304 U.S. 518, 58 S.Ct. 1009, 82 L.Ed. 1502 (1937).

Thus, there is no question as to Arizona's jurisdiction over the land in question in this case.

STATE PROSECUTION OF FEDERAL OFFICERS IS PROPER.

> "It is axiomatic that the right of the States, consistently with the Constitution and laws of the United States, to make and enforce their own laws is equal to the right of the federal government to exert exclusive and supreme power in the field that by virtue of the Constitution belongs to it. The removal statute under consideration is to be construed with highest regard for such equality. Federal officers

> and employees are not, merely because they are such, granted immunity from prosecution in state courts for crimes against state law" State of Colorado v. J. Foster Symes, 286 U.S. 510, 76 L.Ed. 1253 at 1258.

This quotation from the Supreme Court of the United States articulates the right of a State to prosecute a federal officer for a violation of a state law. The case dealt with a prohibition agent arresting a suspect for a violation of a prohibition law and in so doing inflicting an injury on him by means of a blow to the head which resulted in death. The Court clearly holds that it is proper for the state to prosecute a federal officer who is acting under "color of his office" which includes acts done "under a pretense or claim of right", i.e. arrest, but "outside the scope of the officer's authority", i.e. unreasonable use of force in making an arrest.

But this is not the only case which demonstrates the right of a State to prosecute a federal officer for the violation of a state criminal statute. Brown v. Cain, 56 F.Supp. 56, cited by defense counsel indicates this as well. However, the clearest authority for the propriety of such state action is the removal statute itself. 28 U.S.C.A. § 1442 provides a procedure for handling state prosecution of federal officers and, in so doing, reflects the belief of the Federal Government that such prosecutions are proper. Frankly, the principle of state prosecution of federal officers seems so clear as to make argument on the point difficult.

It appears from defense counsel's Motion to Dismiss and subsequent Motion to Arrest Judgment on jurisdictional grounds that counsel is attempting to persuade the court that the combination of a federal officer

on federal land somehow divests the State from jurisdiction. There is no authority nor even logical rationale for such a conclusion. Indeed, counsel for the defense cites none. He does, however, cite some broad principles in the law with which the State has no argument. These propositions, nonetheless, do not answer or even shed light on the question before the court.

While there are few cases dealing with the exact issues presented by the case at bar the area is not without precedent. State v. Adams, 195 S.E. 822, 213 N.C. 243 (1938) is very much on point. That case dealt with a "Farm Agent of the Cherokee Indian Agency" with duties of "farming and looking after the farm lands of the reservation." This United States agent destroyed a cartway bridge which had been built on a Federal reservation without the consent of

the United States Government (see United States v. Colvard, 89 F.2d 312). Apparently, the bridge and road were built over Indian land, after a state condemnation proceeding, to facilitate a business operating in the area. The condemnation suit was against the Indian nation which was using the land, not against the United States Government, and eventually declared invalid in Colvard, supra. The Farm Agent, Adams, took it upon himself, prior to any court order, to destroy the bridge and roadway without authority of the United States and not in pursuance of his duties as a farm agent. Adams establishes clear precedent for the proposition that a federal officer, acting outside the scope of his authority, though on federal land, is not immune from state criminal prosecution.

ANOTHER CONSIDERATION

It is interesting, if not persuasive, to consider one other point before closing. Even assuming the Federal Government were to prosecute this case; pursuant to 18 U.S.C.A. § 13, Mr. Manypenny could stand trial on the exact charges he faced in this Court and was found guilty of violating that is, A.R.S. § 13-249 A and B. Of course, it must be determined that the state statute is different from the Federal statute to enable the Federal Prosecutor to use the State statute. Fields v. United States, 438 P.2d 205. Clearly, the State statute prohibiting assault with a "deadly weapon to wit: a gun" is different than the applicable Federal statute 18 U.S.C.A. § 113 prohibiting an assault with a "dangerous weapon". The State statute contemplates a more serious assault as evidenced by the

sentence of from five years to life. In stark contrast, the Federal statute provides a sentence of only one to five years. The State statute "more precisely fits the facts" and is therefore the proper statute to proceed under in a federal prosecution. Fields v. United States, supra. This being the case, it is apparent that a federal prosecution would be identical to a state prosecution once the case is removed to Federal court, as it was here. That is, the defendant would be prosecuted in a Tucson Federal Court under A.R.S. §13-249 A and B which is exactly what was done in this case.

The only difference would be the name of the prosecutor. In the interest of justice it would seem more proper to have a prosecutor from somewhere other than the same Justice Department which employs the defendant. It is even possible that a

special prosecutor from the local County Attorney's office would be requested and, in that event, the exact same prosecutor could conceivably try the case. But in any event, certainly the propriety of the prosecution can not turn on the title of the prosecutor assigned to the trial. Along the same lines it is noteworthy, if not ironic, that at one point during the pretrial proceedings it was argued by the defense that the U.S. Attorney should help defend the case. (See, Motion for Order Directing Attorney for Government to Enter an Appearance, filed July 22, 1976). Now, it is the defense counsel's position that this same agency, once sought in aid of the defense, should prosecute.

CONCLUSION

In the beginning of this memorandum it was conclusively demonstrated that the State does have concurrent jurisdiction over

the lands of the Organ Pipe National Monument where the shooting occurred. Secondly, the authority of the State to prosecute a federal officer was conspicuously illustrated. These areas are, in effect, the two parts of defense counsel's argument with which he hopes to persuade the Court. It is the State's position that the total of defense counsel's argument can not exceed the sum of its individual parts. Neither part of defense counsel's argument is meritorious on close inspection. The stacking of one part upon another does nothing to change this; for even in the law, zero plus zero is still zero.

Respectfully submitted this 3rd day of December, 1976.

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

_____
Larry J. Lingeman
Deputy County Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Case No. CR 76-377-TUC-WCF
(Filed December 6, 1976)

The State Of Arizona, Plaintiff,

vs.

William Dale Manypenny, Defendant

ORDER

Counsel for plaintiff has, with leave of Court, filed a motion for a rehearing on defendant's motion on arrest of judgment. He has also filed a late response to defendant's after verdict motions. He requests a hearing thereon.

The record is clear that defense counsel filed and served by mail a motion for arrest of judgment and for new trial. These Motions were noticed for hearing at 8:30 A.M., November 30, 1976, the time set for sentencing. Counsel for plaintiff failed to appear at the time set for hearing

and sentencing. He later stated to the Court that through neglect he overlooked it on his calendar and didn't arrive at his office in time to appear in Court for the scheduled hearing.

There has been no showing as to why plaintiff's counsel failed to receive copies of defendant's motions which were mailed to the office of the County Attorney.

The motion for rehearing will be treated as a motion for reconsideration of the order granting defendant's motion for arrest of judgment and dismissal of the indictment; however, no hearing time will be set. The matter can and will be reconsidered on the late memorandum, the earlier filed memoranda, the evidence and any reply or response hereafter filed by defendant. Plaintiff's counsel has waived any oral argument or further hearing by failure to timely respond and appear.

This is an ORDER denying plaintiff's request for hearing or oral argument and granting plaintiff's motion for reconsideration.

IT IS FURTHER ORDERED that the Clerk of this Court forthwith mail a copy of this Order to all counsel of record.

DATED this 6th day of December, 1976.

_____

William C. Frey
United States District Judge

JAMES D. WHITNEY
4727 East Fifth Street
Tucson, Arizona 85711
(602) 327-6813
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Case No. CR-76-377-TUC-WCF
(Filed September 9, 1977)

The State of Arizona, Plaintiff

vs.

William Dale Manypenny, Defendant

MOTION FOR STATUS HEARING

The above named Defendant WILLIAM D. MANYPENNY respectfully moves the Court for a hearing to determine the status of the Motion for Reconsideration made subsequent to the dismissal of the indictment and the granting of the Motion in Arrest of Judgment. The Motion for Reconsideration has bee under advisement by the Court for a lengthy period of time and Defendant cannot obtain employment of any substantial nature because of the continued pendency of the action.

DATED this 8th day of September, 1977.

JAMES D. WHITNEY
Attorney for Defendant

A copy of the foregoing mailed
this 8th day of September, 1977,
by certified mail, return receipt
to:

Daniel Smith
Deputy County Attorney
9th Floor, Pima County Courts Bldg.
Tucson, Arizona 85701

James D. Whitney